(Miss.) 389; *St. Louis Perpetual Ins. Co.* v. *Cohen*, 9 Mo. 421. On the other hand, where it is held that notes lose their negotiability by becoming overdue and in the hands of purchasers after maturity are subject to all defenses accruing to the maker before notice of the transfer, it has generally been held that the maker is liable as garnishee on all such debts. *Dore* v. *Dawson* (1844), 6 Ala. 712; *Mills* v. *Stewart* (1847), 12 Ala. 90; *Culver* v. *Parish* (1851), 21 Conn. 408; *Robinson* v. *Mitchell* (1834), 1 Har. (Del.) 365; *Burton* v. *Wynne* (1876), 55 Ga. 615; *Snider* v. *Ridgeway* (1869), 49 Ill. 522; *Patton* v. *Gates* (1873), 67 Ill. 164; *Covert* v. *Nelson* (1846), 8 Blackf. (Ind.) 265; *Elston* v. *Gillis* (1880), 69 Ind. 128; *McCoid* v. *Beatty* (1861), 12 Iowa 299; *Stevens* v. *Pugh* (1861), Id. 430; *Yocum* v. *White* (1873), 36 Iowa 288; *Clark* v. *King* (1806), 2 Mass. 524; *Cushman* v. *Haynes* (1838), 37 Mass. (20 Pick.) 132; *Nesbitt* v. *Campbell* (1877), 5 Neb. 429; *Wolfe* v. *Cawoode* (1870), 48 Tenn. (1 Heisk.) 597; *Thompson* v. *Gainesville Nat. Bank* (1886), 66 Tex. 156, 18 S. W. 350; *Hindsdill* v. *Safford* (1839), 11 Vt. 309; *Austin* v. *Ryan* (1878), 51 Vt. 110.

J. R. R.

THE RELATION OF THE BANK TO ITS DEPOSITORS.—For the first time in the history of the Delaware courts the principles governing the relations existing between bank and depositor have come up before the Supreme Court. For this reason the court entered into an "elaborate consideration of the governing principles."

The plaintiff depositor had an extensive account with the defendant bank, checks upon which account were from time to time issued by the secretary or treasurer of the company. In the regular course of business many of these checks came from the office of the treasurer into the hands of the secretary, who fraudulently altered them so as to be made payable "to bearer" rather than payable "to order." In all 114 checks were so altered during a period of time covering several years, and during which time statements of account were rendered by the bank, but through the carelessness and fraud of the company's officers the alterations were not noticed. The changes were patent. The suit is to credit the plaintiff with checks paid out by the bank and debited from the account of the company. *National Dredging Company* v. *Farmers' Bank of the State of Delaware* (1908) — Del. —, 69 Atl. 607.

Respecting the duty of the depositor, Mr. Justice HARLAN said, in the case of *The Leather Manufacturers' Bank* v. *Morgan*, 117 U. S. 96, 106: "The depositor cannot without injustice to the bank omit all examination of his account, when thus rendered at his request. His failure to make examination or have it made within a reasonable time after the opportunity given for that purpose is inconsistent with the object for which he obtains and uses the pass book." This duty of the depositor operates only in the case in which the bank has been guilty of no negligence and in which the depositor is guilty of laches. The comments of Mr. Justice HARLAN in the

Leather Manufacturers' Bank case have been accepted as the correct interpretation of the law in many states.

In a Georgia case the rule was applied in a way which amounted practically to a disapproval of the former case. The depositor in the Georgia case delayed three years in the discovery of the forgery which resulted in his loss, and the court said that such delay did not constitute laches on his part. The case was distinguished from *The Leather Manufacturers' Bank* v. *Morgan* upon the grounds that there was reason for a different rule to be applied in cases of forged instruments than in cases of "raised" instruments. The court said that the error in the latter case was more apparent than in the case at its bar. The Georgia case goes upon the assumption that the depositor must have knowledge of the alteration and then fail to notify the bank in order that he will be estopped to shift the burden of the loss. *Atlanta National Bank* v. *Burke,* 81 Ga. 597.

The case of *Cincinnati National Bank* v. *Creasy,* 18 Law Bulletin 410, 10 Ohio Dec. (reprint) 121, presents an opinion of the Superior Court of Cincinnati which agrees entirely with the Georgia case just cited. That case holds that a depositor in a bank is not bound to look for forged signatures among his checks when his book has been balanced, and will not be presumed to have acquiesced in the account charging him with the payment of such check, where he has failed for more than a reasonable time to examine the checks and discover the forgery. The court says: "A payment made upon a forgery of his own signature is no payment and cannot affect his rights; 2 DANIEL NEG. INST., § 1370. Why, then, should he be on the lookout for forgeries of his signature?"

The rule seems to be quite general that the depositor need not have positive knowledge of the error, but that the rule applies if the returned vouchers are in his possession, from a careful examination of which he could detect the error. The duty of the depositor goes further than to require him to report all errors within his knowledge; it requires him to use due diligence in the examination of his vouchers, and in the failure to use such care the loss is his. *Wind* v. *Fifth National Bank,* 39 Mo. App. 72; *Leather Manufacturers' Bank* v. *Morgan,* 117 U. S. 96, 106, 107, 6 Sup. Ct. 657, 660, 29 L. Ed. 811; *Gloucester Bank* v. *Salem Bank,* 17 Mass. 33, 42; *Frank* v. *Chemical National Bank of N. Y.,* 84 N. Y. 209.

In the interesting and important case of *Shipman* v. *The State Bank,* 126 N. Y. 318, the rule laid down by the United States Supreme Court was recognized to be the law of that state. In that case the court applied the rule that the depositor must respect the rights of the bank, and, in the absence of negligence on the part of the latter, the depositor must not be guilty of laches in the correction of errors, else he will lose his recourse against the bank. In all of these cases there was no negligence on the part of the bank, so that the burden falls upon it unless some principle of estoppel can be found which will preclude the depositor from recovery. If the bank were negligent, the fact that the depositor was also negligent in not discovering the mistakes is no defense in an action for the recovery of the payments carelessly made.

For reasons touching public policy the courts have laid the heaviest burdens for negligence upon the banks because of the very apparent advantage which they have over the depositor. Said Mr. Justice HARLAN, in the *Leather Manufacturers' Bank* case: "Of course, if the defendant's [bank's] officers before paying the altered checks could by proper care and skill have detected the forgeries, then it cannot receive a credit for the amount of those checks, even if the depositor omitted all examination of his accounts." *Janin* v. *The London and San Francisco Bank*, 92 Cal. 14, 17 Pac. 1100, 14 L. R. A. 320.

The primary duty is upon the bank, for it is the institution whose purpose and duty it is to protect the accounts of depositors. In the principal case the alteration consisted of the erasure of the words "or order" and the insertion of the words "or bearer." The alteration stood out boldly, in a different color of ink and in a different handwriting. The court said that it mattered not if the alteration were so skillful as to deceive both the bank and the depositor and care was used by the latter, the loss must fall upon the bank. In the event that payments are made both before and after statements have been rendered by the bank, the case becomes more complicated. Neglecting all looseness of business methods on the part of the bank, it is absolutely liable for all payments incorrectly made before a statement of account is furnished to the depositor. *First National Bank* v. *Allen*, 100 Ala. 476, 14 South 335, 46 Am. St. Rep. 80, 27 L. R. A. 426; *Hatton* v. *Holmes*, 97 Cal. 208, 31 Pac. 1131; *Bank of British North America* v. *Merchants' National Bank*, 91 N. Y. 106.

For payments made after the statement of accounts has been rendered, the bank is not liable, providing it was not negligent and the depositor did not report the errors immediately. By not discovering latent errors, the depositor is at fault. By not discovering latent errors the bank is at fault. The theory of acquiescence on the part of the depositor is applied in those cases in which he fails to correct statements, the truth of which he should be acquainted with. *National Dredging Company* v. *The Bank of the State of Delaware*, supra; *First National Bank* v. *Allen*, 100 Ala. 476. Where the forgeries covered a period of six months, and regular thirty-day reports were given, it was held that the bank was absolutely liable for all payments made before the rendition of the first statement, but for the payments made subsequently the depositor was liable, for the latter had knowledge within his control which would have informed him of the errors, had he made examination of his accounts. *First National Bank* v. *Allen*, 100 Ala. 476.

As is often the case, the person who makes the fraudulent alteration is an officer of the company who has been entrusted with the duty of handling the accounts of the depositor company. *Shipman* v. *Bank*, supra; *Dredging Company* v. *Bank* (principal case). The fact that a trusted officer of the company has not examined the accounts is not chargeable to the bank, but is a fault the burden of which must be borne by the depositor. *Shipman* v. *Bank*, supra; *Dredging Company* v. *Bank*, supra; *Morgan* v. *Railroad Company*, 96 U. S. 716, 720. While the knowlege of the fraud could not be

attributed to the company, yet it will be chargeable with such knowledge and its consequences. *Wachsmann* v. *Columbia Bank* (Com. Pl.), 8 Misc. Rep. 280, 28 N. Y. Supp. 711, 26 N. Y. Supp. 855; *First National Bank* v. *Allen*, supra; *Dredging Company* v. *The Bank of the State of Delaware*, supra; *Hardy* v. *Chesapeake Bank*, 51 Md. 562. W. A. H.

INVALID CONTRACTS FOR CONTINGENT FEES.—It is not unusual that agreements between attorneys and clients providing for contingent fees contain a stipulation to the effect that no settlement of the controversy concerning which there is a bargain for fees shall be made by the client without the attorney's consent.

In the recent case of *Davy et al.* v. *Fidelity and Casualty Ins. Co.*, 85 N. E. 504, the Supreme Court of Ohio condemns such an agreement as champertous and, by the citation of many Ohio decisions, "demonstrates that this court has always maintained a consistent and unambiguous attitude in regard to contracts of the kind which we have in this case." The court holds that the illegal stipulation renders the whole contract illegal and indivisible, and that the illegal stipulation cannot be ignored and the other provisions of the contract enforced.

In a number of other recent decisions substantially the same doctrine has been announced. *Davis* v. *Webber*, 66 Ark. 190, 74 Am. St. Rep. 81, 45 L. R. A. 196; *North Chicago St. R. R. Co.* v. *Ackley*, 171 Ill. 100, 49 N. E. 222, 44 L. R. A. 177; *Davis* v. *Chase*, 159 Ind. 242, 64 N. E. 88, 95 Am. St. Rep. 294. In this last case the contract provided for a contingent fee of fifty per cent of the amount recovered, and the client agreed that he would "not enter into any compromise or accept any sum of money in settlement of said claim unless said [attorney] is present and directs said settlement," and, while an attempt was made by counsel to distinguish this clause from those that distinctly provided that the client could not settle without the attorney's consent, the court held that the provision was invalid and was fatal to the whole contract.

The New York Court of Appeals, in *In re Snyder*, 190 N. Y. 66, 82 N. E. 742, states some of the reasons for its decision that such a contract is invalid, as follows: "In the first place, a decision upholding such a contract would confer upon one person occupying a position of trust toward another unusual power over the latter in the control and management of his own property, for we must not forget that the attorney has only a lien upon the client's cause of action, which still remains the property of the latter. It is not too much to assume that such power would at times be the source of abuse as between the two parties. But more important than any such personal and private considerations is the one of public concern that such contracts would prove added obstacles to that quieting of disputes, and to that adjustment and settlement of litigation which always has been and always should be favored by the acts of legislatures, the decisions of courts, and the expressions of public opinion; for, in my judgment, there is no need of